

REMARKS

The Office Action dated November 25, 2005 has been received and its contents carefully noted. In response thereto, applicants have amended the specification and some existing claims and added some new claims in an effort to place the application in condition for allowance. Reconsideration of the objections to the specification and claims and the rejections of the claims is respectfully requested in view of the foregoing amendments and the following remarks.

Drawings

Applicants are attaching replacement drawings making a correction to the reference lines for reference numeral 12 in Figures 1 and 2 and providing better quality drawings. Approval of the replacement drawings is respectfully requested.

Specification

Applicants have corrected the typographical error noted by the Examiner on page 12.

Claim Objections

Claim 23 has been objected to because of its dependency. Claim 23 has been amended by changing its dependency to claim 19. It is believed that this claim is no longer informal so the objection should be withdrawn.

Claim Rejections - 35 U.S.C. § 112

Claim 5 has been rejected because the phrase "said swivelable cover" is allegedly indefinite. Claim 5 has been amended by changing its dependency to claim 3 thereby providing proper antecedent basis. It is believed that this claim is no longer indefinite so the rejection should be withdrawn.

Allowable Subject Matter

Applicants appreciate the indication that claims 11-14 contain allowable subject matter. Claim 11 has been rewritten in independent form to include all the limitations of claims 1, 10 and 11. Dependent claims 12-14 are dependent on rewritten claim 11. Accordingly, claims 11-14 are believed to be in condition for allowance.

Claim Rejections - 35 U.S.C. §§ 102 and 103

Turning now to the rejection under 35 U.S.C. §§ 102 and 103, claims 1-10, 17-18, 22 and 24-25 have been rejected as being completely shown by Lahr (U.S. Pub. No. 2003/0132863). To reject claims 15-16, the Examiner modifies the Lahr publication on the grounds of alleged obviousness by adding Murphy (U.S. Pub. No. 2003/0147205). Claims 19-21 and 23 have been rejected on the grounds of alleged obviousness by combining the Lahr publication with Kwon (U.S. Pub. No. 2004/0203513). Applicants respectfully disagree with these rejections for the following cogent reasons.

The present invention is concerned with a mobile communication device having a base element (12, 112), at least one functional element (46, 130) mounted for reciprocal movement on the base element (12, 112) between retracted and extended positions (See Figs. 3, 4, 9 and 10) and a cover element (14, 114) mounted to the base element (12, 112) for relative movement thereto between closed and opened positions (See Figs. 1, 2, 9 and 10) and adapted to move the at least one functional element (46, 130) between the retracted and extended positions during relative movement of the cover element (14, 114) between the closed and opened positions.

To further emphasize the features of the present invention, new claims 26-29 have been added and are directed at the details of mechanical interaction of the cover element (14, 114) and the at least one functional element (46, 130) during relative movement of the cover element (14,

114) between the closed and opened positions which moves the at least one functional element (46, 130) between the retracted and extended positions. The mechanical interactive means connects the cover element and the at least one functional element for moving the at least one functional element between the retracted and extended positions during relative movement of the cover element to the base element between the closed and opened positions.

On the other hand, the Lahr publication describes a articulated, rotatable, expandable and contractible keyboard device comprising a housing 12 with a channel 18 in its back into which a hub 22 of a keyboard 20 is contained. While the keyboard of Lahr is expandible, the keyboard and housing do not interact during the opening and closing of the housing to cause expansion of the keyboard as found in the present invention. In Lahr, the opening and closing of the housing is totally independent of the expansion of the keyboard. Accordingly, it is submitted that the present invention is unique and constitutes an important advance in the art over Lahr.

The Examiner recognizes some of the inherent deficiencies of the Lahr publication attempts to correct them by combining bits and pieces of Murphy and Kwon into the Lahr publication. However, Murphy and Kwon do not make up for the above noted basic deficiencies in the Lahr publication so the combinations proposed by the Examiner still fall far short of the present invention. Murphy and Kwon both show pop out expandible keyboards which are not interactive keyboards whose reciprocal movement between their retracted and extended positions

is caused by the relative movement of a cover element between the closed and opened positions as found in the present invention.

In addition, it is only when the Examiner looks to applicants' own disclosure that the Examiner can allege obviousness by choosing these bits and pieces of the prior art references and then combining these bits and pieces together based on alleged obviousness. Such rejections are merely improper hindsight reconstruction of applicants' own invention using applicants' own disclosure. Thus, it is not seen how the claimed invention can be derived from Lahr, Murphy and/or Kwon as these references, alone or in combination, simply do not teach or suggest what is set out in the applicants' claims and do not provide the basis for developing the invention to persons having ordinary skill in the art to which the subject matter pertains. Accordingly, the Examiner's reliance on these prior art references is not properly grounded and the rejections based thereon should be withdrawn.

The Court of Appeals for the Federal Circuit has steadfastly criticized the type of hindsight modification being practiced by the Examiner in this application. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). See also, e.g., In re Laskowski, 871 F.2d 115, 10 USPQ 2d 1397 (Fed. Cir. 1989); Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551

(Fed. Cir. 1985); In re Grabiak, 769 F.2d 729, 731, 226 USPQ 870, 872 (Fed. Cir. 1985); In re Sernaker, 701 F.2d 989, 994, 217 USPQ 1, 5 (Fed. Cir. 1983).

Accordingly, it is submitted that the present invention as claimed is readily distinguishable from the prior art for the reasons indicated. Applicants' invention is not disclosed by any of the prior art and there is no fair basis for alleging that applicants' invention is obvious in regard to such prior art. If the invention was obvious, it would have been adopted before in view of its advantages.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that all the claims are allowable and early favorable action is earnestly solicited. The Examiner is invited to call applicants' attorney if any questions remain following review of this response.

Respectfully submitted,

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By 

K. Bradford Adolphson  
Attorney for Applicants  
Registration No. 30,927

WARE, FRESSOLA, VAN DER SLUYS  
& ADOLPHSON LLP  
Bradford Green, Building Five  
755 Main Street, P.O. Box 224  
Monroe, Connecticut 06468  
Telephone: (203) 261-1234  
Facsimile: (203) 261-5676